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96201—36

In the Supreme Court of the United States

OCTOBER TERM, 1936

Nos. 420, 421

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRUEHAUF TRAILER COMPANY

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that writs of certiorari issue to review the decrees of the United States Circuit Court of Appeals for the Sixth Circuit, entered in the above cause on June 30, 1936 (R. 520), denying a petition by the National Labor Relations Board for the enforcement of its cease and desist order against the Fruehauf Trailer Company, made pursuant to the National Labor Relations Act, and granting a petition by said company to set aside said order.

OPINIONS BELOW

The findings of fact and order of the National Labor Relations Board (R. 45–59), and the opinion of the Circuit Court of Appeals (R. 521–522) have not yet been reported.

JURISDICTION

The decrees of the Circuit Court of Appeals for the Sixth Circuit were entered on June 30, 1936 (R. 520). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, as applied to this company, the National Labor Relations Act is a valid exercise of the power of Congress to regulate commerce among the States and with foreign nations.

2. Whether the provisions of the National Labor Relations Act here involved violate the Fifth Amendment to the Constitution in that they deprive respondent of its liberty or property without due process of law.

STATUTE INVOLVED

The National Labor Relations Act is printed as an Appendix to the petition for certiorari in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, No. 419, filed herewith, to which the Court is respectfully referred.

STATEMENT

On October 4, 1935, and October 17, 1935, written charges against respondent, the Fruehauf Trailer Company, were filed with the Regional Director for the Seventh Region of the National Labor Relations Board, pursuant to Section 10 (b)

of the National Labor Relations Act (printed in Appendix of petition for certiorari in No. 419, p. 25) (R. 4–6, 7–9). The charges were filed by United Automobile Workers Federal Labor Union No. 19375 and by certain employees of respondent, and alleged that respondent had engaged in, and was continuing to engage in, certain unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (3), and (4) and Section 2, subsections (6) and (7) of the Act (R. 4–9).

On October 23, 1935, and October 29, 1935, pursuant to Section 10 (b) of the Act, the Regional Director issued and served upon respondent two complaints (R. 9–20). These complaints alleged unfair labor practices affecting commerce within the meaning of subsections (1) and (3) of Section 8, and subsections (6) and (7) of Section 2, and fixed November 6, 1935, for a hearing before an examiner (R. 9–20). By order of October 29, 1935, the Board ordered the two proceedings to be consolidated and heard by the Board itself (R. 22–23).

On October 31, 1935, and November 5, 1935, respondent, appearing specially, filed motions to dismiss the respective complaints on the ground that the National Labor Relations Board had no jurisdiction over the company, and also on the ground that the Act as applied to the company contravened the Constitution (R. 23–29). The motion to dismiss the first complaint was overruled by the Board on November 4, 1935 (R. 28). On Novem-

ber 5, 1935, respondent filed answers, renewing its motions to dismiss (R. 29–39).

Hearings were held on November 6, 7, and 8, 1935. Following the introduction of evidence on the jurisdictional issues raised by the motion to dismiss, the Board reaffirmed its overruling of the motion to dismiss the first complaint and overruled the motion to dismiss the second complaint (R. 200).

On December 12, 1935, the Board handed down its decision setting forth its findings of fact (R. 45–58), and entered the order here in question (R. 58–59). These findings may be summarized as follows:

Respondent is a Michigan corporation engaged in the manufacture, sale, assembly, and distribution of commercial trailers and trailer parts and accessories (R. 46). Its plant and principal office are located in Detroit, Michigan, but it maintains branch sales offices in twelve different States, has distributors and dealers in the principal cities of the United States, and operates a wholly-owned subsidiary in Toronto, Canada. It is the largest concern of its kind in the United States (R. 46–7).

More than 50 per cent by value of the materials from which respondent's trailers are built come from States other than Michigan (R. 46). Much of this material coming from other States is in unfinished form, and further work is done on it in the Detroit plant before it is used in the trailers,

but a substantial part of it is received in finished form (R. 47–48). More than 80 per cent of respondent's sales are of products shipped outside Michigan to other States and foreign countries. In the first ten months of 1935 such sales amounted to 112 carloads of products in addition to 400 or 500 trailers and accessories which were hauled over the highways by trucks or tractors to points outside the State (R. 46). These sales are accomplished through its branch sales offices and dealers, and, in Canada, through respondent's Canadian subsidiary. Except where a sale is made from branch sales office stocks for cash, all sales are subject to the approval of the Detroit office, and all notes or mortgages are negotiated through the Freuhauf Trailer Sales Company, a wholly-owned subsidiary, and are made payable to the company (R. 47).

In connection with its interstate sales respondent furnishes service both in the determination of customers' needs and in making mechanical repairs and adjustments (R. 47). Many of its branch sales offices maintain a supply of parts which are shipped to them from the plant in Detroit. Mechanics employed by the company are permanently stationed at many branch offices, and traveling mechanics supervise their work (R. 48). A substantial part of this work consists of changes in construction, weight, and design. The mechanics also install couplings, called "fifth wheels", on the customers' trucks or tractors. Many of the

trailers shipped to other States or foreign countries are disassembled by the company's shipping department before shipment and then assembled again near the point of destination (R. 48).

It is respondent's avowed aim to maintain a steady flow of materials into and through its Detroit plant, and a steady flow of completed trailers out to its purchasers. It maintains for this purpose a planning division employing about twenty or thirty men, who lay out schedules for all operations (R. 48–49). So closely are the various operations synchronized that on occasion work or shipment is delayed until required parts arrive to complete the assembly (R. 49). The company's manufacturing and assembly operations at Detroit are thus essentially connected with and dependent upon its purchases, sales, and distributive operations without the State of Michigan (R. 49). These connections and interdependencies are accomplished through and make use of commerce among the States and with foreign countries, and the instrumentalities of such commerce (R. 49).

A considerable number of respondent's employees belonged to the United States Automobile Workers Federal Labor Union No. 19375, a labor organization. Seven employees, all active members or officers of this Union, were discharged by respondent in the period July 5 to October 10, 1935, in furtherance of its purpose to put a stop to all attempts on the part of its employees to form an

independent labor organization (R. 50–54). These employees were engaged in production, assembly, and disassembly operations (*Id.*). The labor organization of which they are members is of the inclusive, industrial type.

In conclusion, the Board found that any cessation or obstruction of operations at the Detroit plant necessarily has a direct, material, and substantial effect of burdening and obstructing the free flow of commerce between the State of Michigan and other States and Canada (R. 56–57). It also found that the discharges, and threats of discharges, by causing resentment, unrest, and confusion among respondent's employees and by tending to cause labor disputes, had the effect of obstructing the free flow of commerce (R. 57).

On the basis of these findings the Board decided, as a matter of law, that respondent was engaged in unfair labor practices affecting commerce within the terms of Section 8, subsections (1) and (3), and Section 2, subsections (6) and (7) of the Act (R. 57–58). It therefore issued an order requiring respondent to cease and desist from practices tending to interfere with or restrain the organization of its employees, and ordering respondent to offer their former positions with back pay to seven of the discharged men without prejudice to their seniority or other rights; and to post in the plant a notice stating that respondent was complying with the order (R. 58–59).

On December 17, 1935, respondent filed in the court below its petition to review, reverse, and set aside the order of the Board, and on December 23, 1935, it filed a supplementing amendment (R. 492–506). On February 2, 1936, the Board filed a return to the petition, praying that it be dismissed (R. 506–510). On December 19, 1935, the Board filed in the court below a petition for the enforcement of its order (R. 511–513). On March 17, 1936, respondent filed an answer praying that the petition of the Board be dismissed (R. 514–519). On June 30, 1936, the court below entered its decrees denying the petition of the Board and granting the petition of the respondent (R. 520) for the reason that the order of the Board transcended the power of Congress under the commerce clause of the Constitution. The court did not pass upon other constitutional objections urged by respondent.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the order of the Board herein was not one authorized to be made under the authority of Congress.

(2) In construing the Board's order in this case as being directed merely to respondent's production operations and production employees, rather than to the protection of respondent's interstate commerce against direct and substantial burdens brought about by industrial strife among any or all of respondent's employees, as well as others.

(3) In holding that the Act as applied herein is not an appropriate exercise of the power and responsibility of Congress under the commerce clause of the Constitution to protect interstate commerce from burdens and obstructions from whatever source.

(4) In holding in effect that the particular origin of industrial strife characterizes the nature of the resulting burden or obstruction upon interstate commerce, and in not judging the nature of such burden or obstruction, in its relation to interstate commerce, from the character and potentialities of the strife itself.

(5) In holding that the decision of this Court in *Carter* v. *Carter Coal Company,* Nos. 636 and 651, October Term, 1935, decided May 18, 1936, involving the Bituminous Coal Conservation Act of 1935, was controlling as to the non-applicability of the National Labor Relations Act under the facts of this case.

(6) In failing to hold that the Act is not in contravention of the Fifth Amendment or any other provision of the Constitution.

(7) In denying the petition of the National Labor Relations Board and granting the petition of respondent.

REASONS FOR GRANTING THE WRIT

This case presents issues similar to those involved in *National Labor Relations Board* v. *Jones & Laughlin Steel Company,* No. 419, present

term, in which a petition for a writ of certiorari has been filed herewith. In each case the application of the National Labor Relations Act to the particular respondent has been held to be beyond the power of Congress under the commerce clause of the Constitution—a decision of vital public interest. The Court is, therefore, respectfully referred to pages 10 to 14 of the petition in the *Jones & Laughlin* case for a statement of the reasons why the Government believes that a writ of certiorari should issue in these cases.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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Solicitor General.

CHARLES FAHY,
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National Labor Relations Board.

SEPTEMBER 1936.

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